



POLICE DEPARTMENT

September 27, 2019

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2018-18437
Police Officer Raine Pease	:	2018-19120
Tax Registry No. 942869	:	
70 th Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

DISCIPLINARY CASE 2018-18437

1. Said Police Officer Raine Pease, while on-duty and assigned to the 102nd Precinct, on or about January 10, 2018, after having recovered a quantity of marijuana from a prisoner, failed to ensure that it was vouchered.
P.G. 218-01, Page 1, Paragraph 3 Invoicing Property - General Procedure
Property – General
2. Said Police Officer Raine Pease, while on-duty and assigned to the 102nd Precinct, on or about January 10, 2018, failed to make an Activity Log entry that an amount of marijuana had been recovered from a prisoner.
P.G. 218-01, Page 1, Paragraph 1 Invoicing Property - General Procedure
Property – General
P.G. 212-08, Page 1, Paragraph 1 Activity Logs
Command Operations
3. Said Police Officer Raine Pease, while on-duty and assigned to the 102nd Precinct, on or about January 10, 2018, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer discussed with other uniformed Members of the Department and caused the discarding of a quantity of marijuana that had been taken into police custody.
P.G. 202-21, Page 1, Paragraph 8 Police Officer - Duties and Responsibilities
P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
General Regulations
4. Said Police Officer Raine Pease, while on-duty and assigned to the 102nd Precinct, on or about January 10, 2018, having become aware of misconduct committed by another Member of the Service, wrongfully failed to report said allegation to the Internal Affairs Bureau, as required.
P.G. 207-21, Page 1, Paragraph 1 Allegations of Corruption or Other
Misconduct against Members of the Service
Complaints

DISCIPLINARY CASE 2018-19120

1. Said Police Officer Raine Pease, while assigned to the 102nd Precinct, on or about May 3, 2018, during an integrity test, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer allowed a correctional officer to participate in an assignment involving Members of the Service.
P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
General Regulations
2. Said Police Officer Raine Pease, while assigned to the 102nd Precinct, on or about May 3, 2018, during an integrity test, wrongfully engaged in conduct prejudicial to the good order,

efficiency, or discipline of the Department, in that, after having been instructed on the need to prepare a Domestic Incident Report for domestic incidents, said Police Officer wrongfully failed to prepare a Domestic Incident Report.

P.G. 203-03, Page 1, Paragraph 2

P.G. 203-05, Page 1, Paragraph 1

P.G. 208-36, Pages 9-10, Para. 17, Note

P.G. 203-10, Page 1, Paragraph 5

Compliance with Orders

Performance on Duty - General

Family Offenses/Domestic Violence

Public Contact – Prohibited Conduct

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 20 and August 19, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called UC 5050, UC 5061, Detectives [REDACTED] and Rodney Howard, and Police Officers Rohitbir Singh and Nicholas Bellacosa, as witnesses, and introduced the prior recorded statement of former police officer Bryce Blake. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

Case No. 2018-18437:

Specification 1 (failed to ensure vouchering): Not Guilty

Specification 2 (activity log omission): Guilty

Specification 3 (caused discarding of marijuana): Guilty

Specification 4 (failed to report to IAB): Guilty

Case No. 2018-19120:

Specification 1 (allowed outsider's participation): Not Guilty

Specification 2 (failed to prepare DIR): Guilty

Recommended penalty: thirty (30) vacation days and one-year dismissal probation.

ANALYSIS

Respondent faces charges stemming from two integrity tests in 2018. In the first test, on January 10, Respondent allegedly failed to ensure the vouchering of marijuana that was recovered from a prisoner, which instead was discarded by another officer. During the second test, which occurred on May 3, Respondent came upon a domestic dispute staged by two undercover officers. It is alleged that Respondent wrongfully failed to prepare a Domestic Incident Report ("DIR"), and that he wrongfully permitted an off-duty corrections officer on the scene to participate in his handling of the dispute. Each matter will be considered separately.

Case No. 2018-18437 (Marijuana case)

On the afternoon of January 10, 2018, female UC 5080 was part of a staged dispute with a male acquaintance, UC 5069, in the parking lot of a shopping complex on Atlantic Avenue in Queens. The male alleged that UC 5080 smashed his cell phone, damaging the screen. UC 5080 had five bags of marijuana inside her handbag. The purpose of the staged incident was to test whether the target, Police Officer Bryce Blake, would properly voucher property recovered as part of the arrest of UC 5080. By the time Officer Blake and his partner, Officer Oliver, arrived at the scene, four other officers already were present: Officers Singh and Bellacosa arrived first, followed by Respondent and his partner, Officer Ali.

Detective [REDACTED], who was UC 5080 on the date of the incident, testified that she was handcuffed by Officer Blake, who then searched her handbag with Respondent and recovered the marijuana. Respondent asked her about the marijuana, and she told him it belonged to UC 5069. After UC 5080 was placed inside the police car, Officer Blake said to her that all he found inside her bag was money and her identification, with no mention of the marijuana. Respondent then approached Officer Blake and asked him if he had spoken with UC

5080 regarding the contents of her bag, and Officer Blake responded that he had. Detective [REDACTED] testified that Respondent may then have told Officer Blake not to worry, that he (Respondent) already had taken care of it by disposing of the marijuana by the Burger King garbage; Detective [REDACTED] acknowledged that she was "not one hundred percent sure" that Respondent actually made that statement. Officer Blake brought UC 5080 to the precinct, where she was charged only with criminal mischief; Respondent was not present at the precinct for the arrest processing. (Tr. 111-14, 116-17)

A recording of the incident made by UC 5080 was lost and unavailable for trial; the Department Advocate consented to an adverse inference regarding the lost evidence. A separate video recording made by UC 5069, and the accompanying transcript, were admitted as Department Exhibits, 4 and 4A, respectively. In that recording, UC 5069 can be heard complaining to the officers that UC 5080 smashed his phone. UC 5069 initially states that if she pays him money for the damage, he won't pursue charges, but then changes his mind and insists that she be arrested. Respondent tries to get him to reconsider, but UC 5069 maintains that he wants UC 5080 arrested.

Bryce Blake, who resigned from the Department sometime after this incident, did not respond to a subpoena to appear as a witness. A copy of his recorded Department interview on January 12, 2018, and the accompanying transcript, were admitted as Department Exhibits 6 and 6A, respectively. In that interview, Blake stated that Respondent searched the handbag before him and informed Blake that there were marijuana bags inside. Blake, as the arresting officer, took possession of the handbag and searched it, recovering four or five little bags of marijuana. The six police officers on the scene had a conversation regarding what to do with the marijuana, and Respondent recommended disposing of it; according to Blake, none of the other officers made any statements about discarding the marijuana. Blake agreed to do so, and placed the

marijuana inside a black plastic bag, which he later placed in a garbage receptacle in front of the precinct. Blake stated that no other officer was present when he did so, and Blake did not inform any of the officers where he had disposed of the marijuana. (Dept. Ex. 6A at 8-13)

Officer Rohitbir Singh of the 102nd Precinct testified that when he and Officer Bellacosa arrived at the parking lot, they separated the male and female who were having a dispute about the broken phone. Additional officers arrived, and Respondent and Officer Blake searched the female's bag, recovering marijuana. After the female was placed into the RMP, Respondent called the officers together to discuss what to do about the marijuana. Respondent stated that he felt bad for the female and wanted "to not put the marijuana on her." Respondent did not, however, instruct anyone to do anything with respect to the marijuana. None of the other officers spoke during this meeting. Officer Singh did not see anyone dispose of the marijuana. He acknowledged that he did not notify IAB of his observations, for which he received a command discipline. (Tr. 121-23, 126-28)

Officer Nicholas Bellacosa confirmed that Respondent called the officers together to discuss what to do with the marijuana. Respondent stated to the officers that he and Officer Blake had discussed throwing the marijuana away. Officer Bellacosa did not, however, hear Respondent direct Officer Blake to discard the marijuana. Officer Bellacosa also received a command discipline for failing to report his observations to IAB. (Tr. 132-34)

Detective [REDACTED] of IAB testified that a search through the garbage at the Burger King yielded negative results. After Officer Blake was interviewed, the garbage in front of the 102nd Precinct was searched and the marijuana was recovered. Photographs showing the bags of marijuana recovered from the garbage were introduced into evidence as Department Exhibits 5A-5F. A copy of Respondent's activity log, which makes no mention of the recovery of the marijuana, was introduced as Department Exhibit 7. (Tr. 140-43, 147-48)

Respondent testified that when he observed the female's handbag on the trunk of a car, he looked inside the bag and observed a quantity of marijuana. He told Officer Blake, who took control of the bag and its contents. Respondent "expressed his thoughts" to the officers on the scene that the marijuana should be discarded; he felt that the female should not be charged with the marijuana because he did not want to compound her already difficult situation. He did not, however, direct anyone about what to do with the marijuana. Officer Blake said that he would take care of the marijuana in the bag and dispose of it. Respondent acknowledged that looking back, he should have kept his thoughts to himself. (Tr. 162-64, 175-76, 179)

According to Respondent, he did not make an entry in his memo book about the marijuana because it was not his arrest. He also maintained that it was not his job to vouch for the marijuana since Officer Blake was the arresting officer. Respondent did not notify IAB that Officer Blake had said that he was going to throw away the marijuana. (Tr. 164-65, 180)

The specifications will be considered out of order.

Specification 3 charges Respondent with discussing and causing the discarding of the marijuana. It is undisputed that it was Officer Blake, and not Respondent, who actually disposed of the marijuana. However, between the credible testimony of the Department's witnesses, the video recording, and Respondent's own admissions, the credible evidence also established that Respondent initiated a discussion regarding the marijuana during which he, alone, advocated for its disposal in order to avoid bringing additional charges against the female. Further, Detective [REDACTED] testified in a detailed and credible manner about how Respondent approached the RMP and had a follow-up conversation with Officer Blake. Detective [REDACTED] candidly admitted that she was unsure whether Respondent stated that he had taken care of things by discarding the marijuana in the Burger King garbage; given her uncertainty, and the fact that the marijuana was recovered elsewhere, I do not credit that Respondent actually made that statement. However, I

do credit Detective [REDACTED]'s testimony that Respondent checked with Officer Blake as to whether he had spoken with the female about what was inside the bag, presumably in an effort to make sure that the female was aware of their intention not to charge her with possessing marijuana.

Counsel for Respondent argues that it was Officer Blake, as the arresting officer, who discarded the marijuana, and he, alone, should be held accountable for its disposal. Respondent was not Officer Blake's supervisor, and none of the witnesses heard Respondent directly order Officer Blake to get rid of the marijuana.

However, even if Officer Blake was the one who physically discarded the marijuana, that does not mean that he was the only cause of its disposal. To limit accountability in that fashion would require an unduly narrow reading of the concept of "cause." Respondent was the one who initiated the discussion among the officers, and he was the only one speaking during the brief meeting. Respondent made clear his position that he did not want the female to be charged with possessing the marijuana. Officer Blake informed Respondent that he would, in fact, dispose of it. Respondent then followed up with Officer Blake to confirm that the process of discarding the marijuana had been set in motion: Respondent checked with Officer Blake to make sure that the female in custody had been apprised of their intentions regarding the marijuana.

As such, even if he, himself, did not discard the marijuana, Respondent's actions were a significant contributing factor toward the disposal of the contraband. The credible evidence has established that Respondent engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that he discussed and caused the discarding of the marijuana that had been recovered. Accordingly, I find Respondent guilty of Specification 3.

Specification 2 charges Respondent with failing to make an activity log entry regarding the marijuana recovered from a prisoner. Section 212-08 (1)(c)(3) of the Patrol Guide requires

members of service to record in their activity logs "tasks performed." It is undisputed that there is no mention of the marijuana in Respondent's activity log (Dept. Ex. 7). Counsel for Respondent argues that an officer is not required to give a "blow-by-blow" account of his activities in his memo book, and there was no need for Respondent to record that information here. This tribunal disagrees.

Here, Respondent was the first officer to search the suspect's handbag and the first to discover the marijuana. He then brought the results of his search to the attention of Officer Blake, the arresting officer, who physically recovered the contraband. Even if the marijuana was ultimately the responsibility of Officer Blake, Respondent played an important role in its recovery, information that might later prove significant in the handling of the case. As such, Respondent's participation in the recovery of the marijuana was a relevant task that should have been documented in his activity log. Because Respondent failed to do so, I find him guilty of Specification 2.

Specification 4 charges Respondent with failing to inform IAB of misconduct committed by another member of service, namely Officer Blake. It is undisputed that Respondent did not report anything about the handling of the marijuana, including Officer Blake's statement that he was going to discard the contraband. Indeed, Counsel for Respondent conceded that the evidence established his client's guilt on this count. Accordingly, I find Respondent guilty of Specification 4.

Specification 1 charges Respondent with failing to ensure that the marijuana was vouchered. Section 218-01 (3) of the Patrol Guide requires a member of service, upon taking property into custody, to prepare a property clerk invoice worksheet.

In this case, Respondent was not the officer who took the property into custody; rather, it was Officer Blake who took control of the contraband, and it was his responsibility to ensure that

it was appropriately vouchered. To be sure, as discussed above, Respondent was complicit in the decision to discard the marijuana. After the arrest was made, however, Respondent resumed patrol while Officer Blake took the prisoner and the contraband back to the precinct. There was no duty on Respondent to ensure that the marijuana was vouchered, and I find him not guilty of Specification 1.

Case No. 2018-19120 (DIR case)

UC 5050, an undercover detective with IAB, testified that he approached Respondent on the street and complained that he was having a dispute with his daughter's mother (UC 5061). Specifically, UC 5050 stated that even though UC 5061 was the custodial parent, he did not want to return their child to her because she was an "unfit mother." He explained that the mother was always drinking, smoking, and leaving the child alone, and their daughter was dirty when she came home from being with her. He also stated that the mother's family sent him threatening texts, though he did not want anyone arrested for that. UC 5050 requested that Respondent prepare a report reflecting their argument so that UC 5050 would have paperwork to bring to court on the issue of custody. (Tr. 28-29, 42, 45, 50, 53, 55-56)

According to UC 5050, Respondent declined to prepare the report, telling him it was just a disagreement between the two of them. UC 5061 also unsuccessfully requested paperwork to bring to court. UC 5050 testified that Respondent allowed an off-duty corrections officer who happened to be in the vicinity to get involved in the discussion regarding how to handle the matter. Respondent described the corrections officer to the two undercovers as "an off-duty officer." The corrections officer told them that from his own experience, it was best to try to work things out between themselves, or else go to court. The conversation between the parties lasted approximately 35 minutes, after which Respondent still refused to prepare a DIR for either

undercover, instead advising that they go to family court to deal with their issues. Respondent suggested that UC 5050 return the child to UC 5061 at a specified time later that day, and UC 5050 agreed. (Tr. 29, 36, 39-40, 46-48, 54-55)

UC 5061 similarly testified how UC 5050 asked Respondent for paperwork because UC 5061 was an unfit mother. She confirmed that she, too, requested a report from Respondent, telling him that she was the custodial parent, and the father did not return their child to her in a timely manner. Respondent did not provide either of them with a report, advising them to go to family court. (Tr. 60-62, 64, 68-71)

Each of the two undercovers made audio recordings of the incident. There also were two back-up "ghosts" who made video recordings of what transpired. The audio recording of UC 5050, and the accompanying transcript, were admitted as Department Exhibits 2 and 2A, respectively, while the recording and transcript from UC 5061 were admitted as Department Exhibits 3 and 3A. The composite video footage from the two ghosts was placed on one disc, with the audio from UC 5050's microphone superimposed over the video (Dept. Ex. 1). The audio recordings essentially capture the incident as described by the two undercover detectives in their testimony, though at times it is difficult to understand precisely what is being said. In the video footage, which is approximately 32 minutes in length, the two undercovers can be seen standing by the side of an RMP speaking with Respondent. About 14 minutes into the video, the off-duty corrections officer joins the discussion.

Detective Rodney Howard of IAB testified that Respondent previously had received re-instruction on the need to prepare a DIR when handling a domestic incident. (Tr. 150-54) A 2012 letter ordering that reinstruction, and a follow-up police report acknowledging that the re-instruction had been provided, were admitted into evidence (Dept. Ex. 8A, 8B).

Respondent testified that he and his partner were at the location to handle a job involving items stolen from the fitness club locker of an off-duty corrections officer. While Officer Ali was preparing the complaint report for that theft, Respondent was approached by a male who asked for advice involving child care issues between the male and his daughter's mother. The mother also spoke to Respondent about her concerns regarding the whereabouts of her daughter. Both parents asked for Respondent to prepare a report, though neither of them accused the other of committing a crime. Respondent felt that without an order from a court, he was not authorized to tell the parties what to do regarding their child, and he advised them to go to family court. He did not prepare a DIR for either of them, since they were merely asking for advice, and he believed he satisfied their needs. Respondent acknowledged that in 2012, he received instruction on the need to prepare such reports. (Tr. 166-69, 172, 181-85)

Respondent explained that he allowed the off-duty corrections officer to speak with the parties because he was offering helpful information. It was not a volatile situation, and Respondent did not believe that the corrections officer was aggravating matters in any way. (Tr. 170-71, 183)

Specification 1 charges Respondent with wrongfully allowing a corrections officer to participate in an assignment involving members of service. The evidence was clear that during Respondent's interaction with the two undercover, he permitted the off-duty corrections officer to speak with the couple. There was, however, no indication that the corrections officer disrupted the investigation or hampered it in any way. Rather, he merely offered advice to the feuding couple based on his own experience.

The Department Advocate cites no specific Patrol Guide rule prohibiting an officer from allowing a third party to speak in a situation such as this. Under these particular circumstances, it was not misconduct for Respondent to permit the corrections officer to try to assist the couple

in resolving their dispute. The credible evidence has failed to establish that Respondent acted wrongfully in this regard, and I find him not guilty of Specification 1.

Specification 2 charges Respondent with wrongfully failing to prepare a DIR. Here, it is undisputed that Respondent did not prepare a report. He failed to do so despite being reinstructed on preparing such forms in 2012. Counsel for Respondent argues that this was a mere disagreement between the parties that did not necessitate the preparation of a DIR. There was no crime being alleged, and there was no specific court order being violated by either party.

However, based on the credible testimony of the two undercovers, and the accompanying footage, this was a situation that required the preparation of a DIR. Section 208-36 (17) of the Patrol Guide requires an officer to prepare a DIR "in ALL instances in which response to OR becoming apprised of an incident (e.g., altercation, disturbance, conflict, or dispute) that involves members of the same Family/Household – Expanded Definition, or is an allegation of child abuse." Here, UC 5050 complained to Respondent that UC 5061 was drinking, smoking, and leaving their child unattended, and that the child was dirty when she was with her mother. He also informed Respondent that UC 5061's family had sent him threatening texts. UC 5061, meanwhile, complained to Respondent that UC 5050 had not returned her daughter in a timely manner. Both undercovers specifically requested that paperwork be prepared in order to document their concerns.

As such, Respondent was presented with a situation where there plainly was a dispute occurring between members of the same family. There was more than enough evidence of conflict to require documentation, including allegations of possible child endangerment, harassing texts, and a child not being returned to a parent. It was not enough for Respondent to advise the disputants to go to family court; Respondent needed to prepare a DIR where he memorialized the dispute. This he failed to do, and I find Respondent guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 23, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record.

The Department Advocate recommends that Respondent forfeit thirty (30) vacation days and be placed on one-year dismissal probation. That request is reasonable.

On the one hand, as noted by the Department Advocate, penalties for failing integrity tests of this kind typically involve the forfeiture of 10 to 15 days. See, e.g. *Disciplinary Case No. 2015-13299* (Apr. 7, 2016) (four-year police officer with no disciplinary record negotiated a penalty of 15 vacation days for failing to prepare a DIR because he believed the couple was only having a verbal dispute); *Disciplinary Case No. 2017-17091* (Dec. 14, 2017) (seven-year police officer with no disciplinary record negotiated a penalty of 18 suspension days previously served for failing to voucher four ziplock bags of marijuana during an integrity test).

However, here Respondent committed such misconduct *twice* within a four-month period. As such, there is a greater level of concern, and a period of monitoring is warranted. Taking into account the totality of the circumstances and issues in this matter, I recommend that Respondent forfeit thirty (30) vacation days, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the

force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED



JAN 23 2020
DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RAINE PEASE
TAX REGISTRY NO. 942869
DISCIPLINARY CASE NOS. 2018-18437 & 2018-19120

Respondent was appointed to the Department on January 23, 2007. On his last three annual performance evaluations, he received a 3.5 overall rating of "Highly Competent/Competent" for 2015 and 2016, and a 3.0 overall rating of "Competent" for 2014.

[REDACTED]

Respondent has no disciplinary record. Respondent was placed on Level 1 Discipline Monitoring on May 25, 2018 for receiving Charges and Specifications in the instant matter; that monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials